

Representative Jefferson S. Burton proposes the following substitute bill:

CORRECTIONAL FACILITY AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jefferson S. Burton

Senate Sponsor: Derrin R. Owens

LONG TITLE

General Description:

This bill enacts provisions related to communication devices in correctional facilities.

Highlighted Provisions:

This bill:

- defines terms;
- makes it a crime to transport, provide, sell, or possess a communication device at a correctional facility in violation of facility policy; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

76-8-311.3, as last amended by Laws of Utah 2023, Chapter 330

Utah Code Sections Affected by Coordination Clause:

76-8-311.3, as last amended by Laws of Utah 2023, Chapter 330

76-8-311.11, Utah Code Annotated 1953



Be it enacted by the Legislature of the state of Utah:

The following section is affected by a coordination clause at the end of this bill.

Section 1. Section **76-8-311.3** is amended to read:

76-8-311.3. Items prohibited in correctional and mental health facilities --

Penalties.

(1) (a) As used in this section:

~~[(a)]~~ "Communication device" means a device designed to receive or transmit an image, text message, email, video, location information, or voice communication or another device that can be used to communicate electronically.

~~(i)~~ "Contraband" means ~~[any]~~ an item not specifically prohibited for possession by offenders under this section or Title 58, Chapter 37, Utah Controlled Substances Act.

~~[(b)]~~ (ii) "Controlled substance" means any substance defined as a controlled substance under Title 58, Chapter 37, Utah Controlled Substances Act.

~~[(c)]~~ (iii) "Correctional facility" means:

~~[(i)]~~ (A) ~~[any]~~ a facility operated by or contracting with the Department of Corrections to house ~~[offenders]~~ an offender in either a secure or nonsecure setting;

~~[(ii)]~~ (B) ~~[any]~~ a facility operated by a municipality or a county to house or detain ~~[criminal offenders]~~ an offender;

~~[(iii)]~~ (C) ~~[any]~~ a juvenile detention facility; ~~[and]~~ or

~~[(iv)]~~ (D) ~~[any]~~ a building or grounds appurtenant to ~~[the]~~ a facility or ~~[lands]~~ land granted to the state, municipality, or county for use as a correctional facility.

~~[(d)]~~ (iv) "Electronic cigarette product" means the same as that term is defined in Section **76-10-101**.

~~[(e)]~~ (v) "Medicine" means ~~[any]~~ a prescription drug as defined in Title 58, Chapter 17b, Pharmacy Practice Act, but does not include ~~[any]~~ a controlled ~~[substances]~~ substance as defined in Title 58, Chapter 37, Utah Controlled Substances Act.

~~[(f)]~~ (vi) "Mental health facility" means the same as that term is defined in Section **26B-5-301**.

~~[(g)]~~ (vii) "Nicotine product" means the same as that term is defined in Section **76-10-101**.

57 ~~[(h)]~~ (viii) "Offender" means ~~[a person]~~ an individual in custody at a correctional
58 facility.

59 ~~[(i)]~~ (ix) "Secure area" means the same as that term is defined in Section 76-8-311.1.

60 ~~[(j)]~~ (x) "Tobacco product" means the same as that term is defined in Section
61 76-10-101.

62 (2) (a) Notwithstanding Section 76-10-500, a correctional facility or mental health
63 facility may ~~[provide by rule that no]~~ prohibit a firearm, ammunition, a dangerous weapon, an
64 implement of escape, an explosive, a controlled substance, spirituous or fermented liquor,
65 medicine, or poison ~~[in any quantity may be]~~ from being:

66 ~~[(a)]~~ (i) transported to or ~~[upon]~~ within a correctional facility or mental health facility;

67 ~~[(b)]~~ (ii) sold or ~~[given away at any]~~ provided to an offender at a correctional facility or
68 mental health facility; or

69 ~~[(c)]~~ (iii) ~~[given to or used by any offender]~~ possessed by an offender or another
70 individual at a correctional facility or mental health facility~~[-or]~~.

71 ~~[(d)] knowingly or intentionally possessed at a correctional or mental health facility.]~~

72 (b) A correctional facility may prohibit a communication device from being:

73 (i) transported to or within the correctional facility for the purpose of being sold or
74 provided to an offender in the correctional facility;

75 (ii) sold or provided to an offender in the correctional facility; or

76 (iii) possessed by an offender or another individual at the correctional facility.

77 (3) It is a defense to ~~[any]~~ a prosecution under this section if the accused in committing
78 the act made criminal by this section with respect to:

79 (a) a correctional facility operated by the Department of Corrections, acted in
80 conformity with departmental rule or policy;

81 (b) a correctional facility operated by a municipality, acted in conformity with the
82 policy of the municipality;

83 (c) a correctional facility operated by a county, acted in conformity with the policy of
84 the county; or

85 (d) a mental health facility, acted in conformity with the policy of the mental health
86 facility.

87 (4) (a) An individual who transports to or upon a correctional facility, or into a secure

area of a mental health facility, ~~[any]~~ a firearm, ammunition, a dangerous weapon, or an implement of escape with intent to provide or sell it to ~~[any]~~ an offender, is guilty of a second degree felony.

(b) An individual who provides or sells to ~~[any]~~ an offender at a correctional facility, or ~~[any]~~ a detainee at a secure area of a mental health facility, ~~[any]~~ a firearm, ammunition, a dangerous weapon, or an implement of escape is guilty of a second degree felony.

(c) An offender who possesses at a correctional facility, or a detainee who possesses at a secure area of a mental health facility, ~~[any]~~ a firearm, ammunition, a dangerous weapon, or an implement of escape is guilty of a second degree felony.

(d) An individual who, without the permission of the authority operating the correctional facility or the secure area of a mental health facility, knowingly possesses at a correctional facility or a secure area of a mental health facility ~~[any]~~ a firearm, ammunition, a dangerous weapon, or an implement of escape is guilty of a third degree felony.

(e) An individual violates Section 76-10-306 who knowingly or intentionally transports, possesses, distributes, or sells ~~[any]~~ an explosive in a correctional facility or mental health facility.

(5) (a) An individual is guilty of a third degree felony who, without the permission of the authority operating the correctional facility or secure area of a mental health facility, knowingly transports ~~[to or upon a correctional facility or into a secure area of a mental health facility any]~~:

(i) a communication device to or within a correctional facility with the intent to provide or sell the communication device to an offender in the correctional facility;

(ii) spirituous or fermented liquor to or within a correctional facility or a secure area of a mental health facility;

~~[(ii)]~~ (iii) medicine to or within a correctional facility or a secure area of a mental health facility[;] whether or not lawfully prescribed for ~~[the]~~ an offender or detainee; or

~~[(iii)]~~ (iv) poison [in any quantity] to or within a correctional facility or a secure area of a mental health facility.

(b) An individual is guilty of a third degree felony who knowingly violates correctional or mental health facility policy or rule by providing or selling ~~[to any offender at a correctional facility or detainee within a secure area of a mental health facility any]~~:

119 (i) a communication device to an offender at a correctional facility;

120 (ii) spirituous or fermented liquor to an offender at a correctional facility or a detainee
121 within a secure area of a mental health facility;

122 ~~[(ii)]~~ (iii) medicine[;] to an offender at a correctional facility or detainee within a
123 secure area of a mental facility whether or not the medicine is lawfully prescribed for the
124 offender; or

125 ~~[(iii)]~~ (iv) poison [in any quantity] to an offender at a correctional facility or a detainee
126 within a secure area of a mental health facility.

127 (c) An ~~[inmate]~~ offender is guilty of a third degree felony who, in violation of
128 correctional or mental health facility policy or rule, possesses ~~[at a correctional facility or in a~~
129 ~~secure area of a mental health facility any]~~:

130 (i) a communication device at a correctional facility;

131 (ii) spirituous or fermented liquor at a correctional facility or in a secure area of a
132 mental health facility;

133 ~~[(ii)]~~ (iii) medicine at a correctional facility or in a secure area of a mental health
134 facility[;] other than medicine provided by the facility's health care providers in compliance
135 with facility policy; or

136 ~~[(iii)]~~ (iv) poison [in any quantity] at a correctional facility or in a secure area of a
137 mental health facility.

138 (d) An individual is guilty of a class A misdemeanor who, with the intent to directly or
139 indirectly provide or sell ~~[any]~~ a tobacco product, electronic cigarette product, or nicotine
140 product to an offender, directly or indirectly:

141 (i) transports, delivers, or distributes any tobacco product, electronic cigarette product,
142 or nicotine product to an offender or on the grounds of any correctional facility;

143 (ii) solicits, requests, commands, coerces, encourages, or intentionally aids another
144 person to transport any tobacco product, electronic cigarette product, or nicotine product to an
145 offender or on any correctional facility, if the person is acting with the mental state required for
146 the commission of an offense; or

147 (iii) facilitates, arranges, or causes the transport of any tobacco product, electronic
148 cigarette product, or nicotine product in violation of this section to an offender or on the
149 grounds of any correctional facility.

(e) An individual, other than an offender, is guilty of a class A misdemeanor who, without the permission of the authority operating the correctional or mental health facility, ~~[fails to declare or]~~ knowingly possesses ~~[at a correctional facility or in a secure area of a mental health facility any]~~:

(i) subject to Subsection (7), a communication device at a correctional facility;

(ii) spirituous or fermented liquor at a correctional facility or in a secure area of a mental health facility;

~~[(ii)]~~ (iii) medicine at a correctional facility or in a secure area of a mental health facility; or

~~[(iii)]~~ (iv) poison [in any quantity] at a correctional facility or in a secure area of a mental health facility.

(f) (i) Except as provided in Subsection (5)(f)(ii), an individual is guilty of a class B misdemeanor who, without the permission of the authority operating the correctional facility, knowingly engages in any activity that would facilitate the possession of any contraband by an offender in a correctional facility.

(ii) The provisions of Subsection (5)(d) regarding any tobacco product, electronic cigarette product, or nicotine product take precedence over this Subsection (5)(f).

(g) Exemptions may be granted for worship for Native American inmates pursuant to Section 64-13-40.

(6) The possession, distribution, or use of a controlled substance at a correctional facility or in a secure area of a mental health facility shall be prosecuted in accordance with Title 58, Chapter 37, Utah Controlled Substances Act.

(7) (a) A correctional facility that prohibits an individual other than an offender from possessing a communication device in the correctional facility under Subsection (5)(e)(i) shall post a sign visible to an individual entering the correctional facility that provides the individual with notice that possessing a communication device in the correctional facility is prohibited and the individual may be prosecuted for possessing a communication device.

(b) A prosecuting attorney may not prosecute an individual under Subsection (5)(e)(i) if the correctional facility fails to comply with Subsection (7)(a).

~~[(7)]~~ (8) The department shall make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish guidelines for providing written notice to visitors

that providing any tobacco product, electronic cigarette product, or nicotine product to offenders is a class A misdemeanor.

Section 2. **Effective date.**

This bill takes effect on May 1, 2024.

Section 3. **Coordinating H.B. 26 with H.B. 15**

If this H.B. 26, Correctional Facility Amendments, and H.B. 15, Criminal Code Recodification and Cross References, both pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel prepare the Utah Code database for publication by making the following changes:

(1) amending Section 76-8-311.3 to read:

"76-8-311.3 Establishment of prohibited item policy in a correctional or mental health facility -- Reference to penalty provisions -- Exceptions -- Rulemaking.

(1) (a) As used in this section:

~~[(a) "Contraband" means any item not specifically prohibited for possession by offenders under this section or Title 58, Chapter 37, Utah Controlled Substances Act.]~~

~~[(b)]~~ (i) "Communication device" means a device designed to receive or transmit an image, text message, email, video, location information, or voice communication, or another device that can be used to communicate electronically.

(ii) "Controlled substance" means [any] a substance defined as a controlled substance under Title 58, Chapter 37, Utah Controlled Substances Act.

~~[(c)]~~ (iii) "Correctional facility" means:

~~[(i)]~~ (A) [any] a facility operated by or contracting with the Department of Corrections to house [offenders] an offender in either a secure or nonsecure setting;

~~[(ii)]~~ (B) [any] a facility operated by a municipality or a county to house or detain [criminal offenders] an offender;

~~[(iii)]~~ (C) [any] a juvenile detention facility; [and] or

~~[(iv)]~~ (D) [any] a building or grounds appurtenant to [the] a facility or [lands] land granted to the state, municipality, or county for use as a correctional facility.

(iv) "Dangerous weapon" means the same as that term is defined in Section 76-10-501.

~~[(d)]~~ (v) "Electronic cigarette product" means the same as that term is defined in Section 76-10-101.

(vi) "Firearm" means the same as that term is defined in Section [76-10-501](#).

~~[(e)]~~ (vii) "Medicine" means ~~[any]~~ a prescription drug as defined in Title 58, Chapter 17b, Pharmacy Practice Act, but does not include ~~[any]~~ a controlled ~~[substances]~~ substance as defined in Title 58, Chapter 37, Utah Controlled Substances Act.

~~[(f)]~~ (viii) "Mental health facility" means the same as that term is defined in Section [26B-5-301](#).

~~[(g)]~~ (ix) "Nicotine product" means the same as that term is defined in Section [76-10-101](#).

~~[(h)]~~ (x) "Offender" means ~~[a person]~~ an individual in custody at a correctional facility.

~~[(i)]~~ (xi) "Secure area" means the same as that term is defined in Section [76-8-311.1](#).

~~[(j)]~~ (xii) "Tobacco product" means the same as that term is defined in Section [76-10-101](#).

(b) Terms defined in Sections [76-1-101.5](#) and [76-8-101](#) apply to this section.

(2)(a) Notwithstanding Section [76-10-500](#), a correctional facility or mental health facility may ~~[provide by rule that no]~~ prohibit a firearm, ammunition, a dangerous weapon, an implement of escape, an explosive, a controlled substance, spirituous or fermented liquor, medicine, or poison ~~[in any quantity may be]~~ from being:

~~[(a)]~~ (i) transported to or ~~[upon]~~ within a correctional facility or mental health facility;

~~[(b)]~~ (ii) sold or given away ~~[at any]~~ to an offender at a correctional facility or mental health facility; or

~~[(c)]~~ (iii) ~~[given to or used by any offender]~~ possessed by an offender or another individual at a correctional facility or mental health facility~~[-or]~~.

~~[(d)] knowingly or intentionally possessed at a correctional or mental health facility.]~~

(b) A correctional facility may prohibit a communication device from being:

(i) transported to or within the correctional facility for the purpose of being sold to an offender in the correctional facility;

(ii) sold or given away to an offender in the correctional facility; or

(iii) possessed by an offender or another individual at the correctional facility.

(3) It is a defense to ~~[any]~~ a prosecution ~~[under]~~ related to this section ~~[if the accused in]~~ that the actor, in committing the act made criminal by this section with respect to:

(a) a correctional facility operated by the Department of Corrections, acted in

conformity with departmental rule or policy;

(b) a correctional facility operated by a municipality, acted in conformity with the policy of the municipality;

(c) a correctional facility operated by a county, acted in conformity with the policy of the county; or

(d) a mental health facility, acted in conformity with the policy of the mental health facility.

~~[(4)(a) An individual who transports to or upon a correctional facility, or into a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, or implement of escape with intent to provide or sell it to any offender, is guilty of a second degree felony.]~~

~~[(b) An individual who provides or sells to any offender at a correctional facility, or any detainee at a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, or implement of escape is guilty of a second degree felony.]~~

~~[(c) An offender who possesses at a correctional facility, or a detainee who possesses at a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, or implement of escape is guilty of a second degree felony.]~~

~~[(d) An individual who, without the permission of the authority operating the correctional facility or the secure area of a mental health facility, knowingly possesses at a correctional facility or a secure area of a mental health facility any firearm, ammunition, dangerous weapon, or implement of escape is guilty of a third degree felony.]~~

~~[(e) An individual violates Section 76-10-306 who knowingly or intentionally transports, possesses, distributes, or sells any explosive in a correctional facility or mental health facility.]~~

~~[(5)(a) An individual is guilty of a third degree felony who, without the permission of the authority operating the correctional facility or secure area of a mental health facility, knowingly transports to or upon a correctional facility or into a secure area of a mental health facility any:]~~

~~[(i) spirituous or fermented liquor;]~~

~~[(ii) medicine, whether or not lawfully prescribed for the offender; or]~~

~~[(iii) poison in any quantity.]~~

~~[(b) An individual is guilty of a third degree felony who knowingly violates correctional~~

~~or mental health facility policy or rule by providing or selling to any offender at a correctional facility or detainee within a secure area of a mental health facility any:]~~

~~[(i) spirituous or fermented liquor;]~~

~~[(ii) medicine, whether or not lawfully prescribed for the offender; or]~~

~~[(iii) poison in any quantity.]~~

~~[(c) An inmate is guilty of a third degree felony who, in violation of correctional or mental health facility policy or rule, possesses at a correctional facility or in a secure area of a mental health facility any:]~~

~~[(i) spirituous or fermented liquor;]~~

~~[(ii) medicine, other than medicine provided by the facility's health care providers in compliance with facility policy; or]~~

~~[(iii) poison in any quantity.]~~

~~[(d) An individual is guilty of a class A misdemeanor who, with the intent to directly or indirectly provide or sell any tobacco product, electronic cigarette product, or nicotine product to an offender, directly or indirectly:]~~

~~[(i) transports, delivers, or distributes any tobacco product, electronic cigarette product, or nicotine product to an offender or on the grounds of any correctional facility;]~~

~~[(ii) solicits, requests, commands, coerces, encourages, or intentionally aids another person to transport any tobacco product, electronic cigarette product, or nicotine product to an offender or on any correctional facility, if the person is acting with the mental state required for the commission of an offense; or]~~

~~[(iii) facilitates, arranges, or causes the transport of any tobacco product, electronic cigarette product, or nicotine product in violation of this section to an offender or on the grounds of any correctional facility.]~~

~~[(e) An individual is guilty of a class A misdemeanor who, without the permission of the authority operating the correctional or mental health facility, fails to declare or knowingly possesses at a correctional facility or in a secure area of a mental health facility any:]~~

~~[(i) spirituous or fermented liquor;]~~

~~[(ii) medicine; or]~~

~~[(iii) poison in any quantity.]~~

~~[(f)(i) Except as provided in Subsection (5)(f)(ii), an individual is guilty of a class B~~

~~misdemeanor who, without the permission of the authority operating the correctional facility, knowingly engages in any activity that would facilitate the possession of any contraband by an offender in a correctional facility.]~~

~~[(ii)The provisions of Subsection (5)(d) regarding any tobacco product, electronic cigarette product, or nicotine product take precedence over this Subsection (5)(f).(g)Exemptions may be granted for worship for Native American inmates pursuant to Section 64-13-40:]~~

~~[(6)The possession, distribution, or use of a controlled substance at a correctional facility or in a secure area of a mental health facility shall be prosecuted in accordance with Title 58, Chapter 37, Utah Controlled Substances Act.]~~

~~[(7)The department shall make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish guidelines for providing written notice to visitors that providing any tobacco product, electronic cigarette product, or nicotine product to offenders is a class A misdemeanor:]~~

(4)(a) Except as provided by Subsection (4)(b) or (4)(c), an actor may be charged under Section [76-8-311.4](#), [76-8-311.6](#), [76-8-311.7](#), [76-8-311.8](#), [76-8-311.9](#), [76-8-311.10](#), or [76-8-311.11](#) for a violation of a policy or rule created under this section.

(b) An actor who knowingly or intentionally transports, possesses, distributes, or sells an explosive in a correctional facility or a mental health facility may be punished under Section [76-10-306](#).

(c) The possession, distribution, or use of a controlled substance at a correctional facility or in a secure area of a mental health facility shall be charged under Title 58, Chapter 37, Utah Controlled Substances Act."; and

(2) Section 76-8-311.11 be enacted to read:

"76-8-311.11. Prohibited communication device in a correctional facility.

(1)(a) As used in this section:

(i) "Communication device" means the same as that term is defined in Section [76-8-311.3](#).

(ii) "Correctional facility" means the same as that term is defined in Section [76-8-311.3](#).

(iii) "Offender" means the same as that term is defined in Section [76-8-311.3](#).

(b) Terms defined in Sections [76-1-101.5](#) and [76-8-101](#) apply to this section.

336 (2) An actor commits prohibited communication device in a correctional facility if the
337 actor, without the permission of the correctional facility:

338 (a) knowingly transports a communication device into the correctional facility with the
339 intent to provide or sell the communication device to an offender in the correctional facility;

340 (b) provides or sells a communication device to an offender in the correctional facility;

341 (c)(i) is an offender; and

342 (ii) possesses a communication device in the correctional facility; or

343 (d)(i) subject to Subsection (4), is an individual other than an offender; and

344 (ii) knowingly possesses a communication device at the correctional facility.

345 (3)(a) A violation of Subsection (2)(a), (b), or (c) is a third degree felony.

346 (b) A violation of Subsection (2)(d) is a class A misdemeanor.

347 (4)(a) A correctional facility that prohibits an individual other than an offender from
348 possessing a communication device in the correctional facility under Subsection (2)(d) shall
349 post a sign visible to an individual entering the correctional facility that provides the individual
350 with notice that possessing a communication device in the correctional facility is prohibited
351 and the individual may be prosecuted for possessing a communication device.

352 (b) A prosecuting attorney may not prosecute an individual under Subsection (2)(d) if
353 the correctional facility fails to comply with Subsection (4)(a)."